

Department of Justice

§2.215

his release, the Commissioner shall notify the releasee of the final decision concerning probable cause within 21 days of the date of the preliminary interview. The Commission shall either schedule a revocation hearing, or offer the releasee the option of an expedited revocation without a hearing, pursuant to the procedure set forth in §2.66.

(3) If the Commission finds probable cause to believe that the releasee has violated the conditions of his release, reinstatement to supervision or release pending further proceedings may be ordered in the Commission's discretion if it determines that:

(i) Continuation of revocation proceedings is not warranted despite the violations found; or

(ii) Incarceration pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations, and the releasee is neither likely to fail to appear for further proceedings, nor constitutes a danger to himself or others.

(e) Conviction as probable cause. Conviction of any Federal, District of Columbia, State, or local crime committed subsequent to the commencement of the term of supervised release shall constitute probable cause for the purposes of this section, and no preliminary interview shall be conducted unless ordered by a Commissioner to consider additional violation charges that may be determinative of the Commission's decision regarding revocation.

(f) *Local revocation hearing.* A postponed preliminary interview may be conducted as a local revocation hearing if the releasee has been advised that the postponed preliminary interview will constitute his final revocation hearing. It shall be the Commission's policy to conduct a combined preliminary interview and local revocation hearing whenever adverse witnesses are required to appear and give testimony with respect to contested charges.

(g) *Late received charges.* If, after probable cause has been found to proceed with a revocation hearing, the Commission is notified of an additional charge, the Commission may:

(1) Remand the case for a supplemental preliminary interview if the new charge may require a local revocation hearing;

(2) Notify the releasee that the additional charge will be considered at the revocation hearing without conducting a supplemental interview; or

(3) Determine that the new charge will not be considered at the revocation hearing.

§2.215 Place of revocation hearing.

(a) If the releasee requests a local revocation hearing, he shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, with the opportunity to contest the charges against him, if the following conditions are met:

(1) The releasee has not been convicted of a crime committed while under supervision; and

(2) The releasee denies all charges against him.

(b) The releasee shall also be given a local revocation hearing if he admits (or has been convicted of) one or more charged violations, but denies at least one unadjudicated charge that may be determinative of the Commission's decision regarding revocation or the length of any new term of imprisonment, and the releasee requests the presence of one or more adverse witnesses regarding that contested charge. If the appearance of such witnesses at the hearing is precluded by the Commission for good cause, a local revocation hearing shall not be ordered.

(c) If there are two or more contested charges, a local revocation hearing may be conducted near the place of the violation chiefly relied upon by the Commission as a basis for the issuance of the warrant or summons.

(d) A releasee who voluntarily waives his right to a local revocation hearing, or who admits one or more charged violations without contesting any unadjudicated charge that may be determinative of the Commission's decision regarding revocation and/or imposition of a new term of imprisonment, or who is retaken following completion of a sentence of imprisonment for a

new crime, shall be given an institutional revocation hearing upon his return or recommitment to an institution. An institutional revocation hearing may also be conducted in the District of Columbia jail or prison facility in which the releasee is being held. (However, a Commissioner may, on his own motion, designate any such case for a local revocation hearing instead.) The difference in procedures between a “local revocation hearing” and an “institutional revocation hearing” is set forth in § 2.216(b).

(e) A releasee who is retaken on a warrant issued by the Commission shall remain in custody until final action relative to the revocation of his term of supervised release, unless otherwise ordered by the Commission under § 2.214(d)(3). A releasee who has been given a revocation hearing pursuant to the issuance of a summons shall remain on supervision pending the decision of the Commission, unless the Commission has ordered otherwise.

(f) A local revocation hearing shall be scheduled to be held within sixty days of the probable cause determination. An institutional revocation hearing shall be scheduled to be held within ninety days of the date of the execution of the violator warrant upon which the releasee was retaken. However, if a releasee requests and receives any postponement, or consents to a postponement, or by his actions otherwise precludes the prompt conduct of such proceedings, the above-stated time limits may be extended.

(g) A local revocation hearing may be conducted by a hearing examiner or by any federal, state, or local official who is designated by a Commissioner to be the presiding hearing officer. An institutional revocation hearing may be conducted by an examiner of the Commission.

§ 2.216 Revocation hearing procedure.

(a) The purpose of the revocation hearing shall be to determine whether the releasee has violated the conditions of his supervised release, and, if so, whether his release should be revoked or reinstated.

(b) At a local revocation hearing, the alleged violator may present voluntary witnesses and documentary evidence in

his behalf. The alleged violator may also request the Commission to compel the attendance of any adverse witnesses for cross-examination, and any other relevant witnesses who have not volunteered to attend. At an institutional revocation hearing, the alleged violator may present voluntary witnesses and documentary evidence in his behalf, but may not request the Commission to secure the attendance of any adverse or favorable witness. At any hearing, the presiding hearing officer may limit or exclude any irrelevant or repetitious statement or documentary evidence, and may prohibit the releasee from contesting matters already adjudicated against him in other forums.

(c) At a local revocation hearing, the Commission shall, on the request of the alleged violator, require the attendance of any adverse witnesses who have given statements upon which revocation may be based, subject to a finding of good cause as described in paragraph (d) of this section. The adverse witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator. The Commission may also require the attendance of adverse witnesses on its own motion.

(d) The Commission may excuse any requested adverse witness from appearing at the hearing (or from appearing in the presence of the alleged violator) if it finds good cause for so doing. A finding of good cause for the non-appearance of a requested adverse witness may be based, for example, on a significant possibility of harm to the witness, or the witness not being reasonably available when the Commission has documentary evidence that is an adequate substitute for live testimony.

(e) All evidence upon which the finding of violation may be based shall be disclosed to the alleged violator at or before the revocation hearing. The presiding hearing officer may disclose documentary evidence by permitting the alleged violator to examine the document during the hearing, or where appropriate, by reading or summarizing the document in the presence of the alleged violator.

(f) An alleged violator may be represented by an attorney at either a